

HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

NJ KidCare (NJ FamilyCare-Children's Program)

Proposed Readoption with Amendments: N.J.A.C. 10:79

Authorized By: by Gwendolyn L. Harris, Commissioner,
Department of Human Services.

Authority: N.J.S.A. 30:4D-6; 30:4D-7; 30:4D-12; 42 C.F.R. 440.50; P.L.
1997, c. 272; Title XIX and XXI of the Social Security Act; 42
U.S.C. §§1612, 1613, 1396a(a)(10)(A)(ii), 1396d, 1397aa,
1397bb, 1397cc, 1397ee and 1397jj.

Calendar Reference: See Summary below for an explanation of the exception to the
rulemaking calendar requirements.

Agency Control Number: 03-P-01.

Proposal Number: PRN 2003 -

Submit comments by October 17, 2003 **to:**

Jean Cary
Administrative Practice Officer
Division of Medical Assistance and Health Services
P.O. Box 712, Mail Code #26
Trenton, NJ 08625-0712
Fax: (609) 588-7672
Email: Jean.Cary@dhs.state.nj.us
Delivery: 6 Quakerbridge Plaza
Mercerville, NJ 08619

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 10:79, the NJ KidCare program rules, will expire on January 20, 2004. The filing of the notice with the Office of Administrative Law on or before the July 24, 2003 expiration date under Executive Order No. 66 (1978) extends that expiration date 180 days. This proposed readoption is designed to readopt all eight subchapters of the manual.

NJ FamilyCare is a State program that offers free or low-cost healthcare coverage for uninsured working families in New Jersey. In 1998, all states were given the opportunity to develop an affordable state Children's Health Insurance Program. New Jersey's response was to establish the NJ FamilyCare-Children's Program, formerly entitled NJ KidCare. NJ KidCare was initiated in February 1998 as a combination program, which expanded Medicaid eligibility and added a separate children's health insurance program. NJ KidCare is now known as NJ FamilyCare-Children's Program, which is part of NJ FamilyCare.

Through a Federal waiver, the State was given the opportunity to again expand the program to provide coverage for uninsured parents, caretakers and pregnant woman up to 200 percent of the Federal Poverty Level. Immigrants who entered the country legally for permanent residence, regardless of date of entry, were also offered subsidized insurance, subsidized by the State only.

A subchapter summary of the rules contained in N.J.A.C. 10:79 follows:

N.J.A.C. 10:79-1, Introduction, includes the purpose, scope and the definitions of the NJ KidCare program, which is proposed to be entitled NJ FamilyCare-Children's Program.

N.J.A.C. 10:79-2, Case Processing, describes case processing, including application, interview, application processing, date of initial eligibility, retroactive eligibility for Plan A, redetermination of eligibility and case transfers.

The rules that comprise N.J.A.C. 10:79-3, Nonfinancial Eligibility Factors, delineate the nonfinancial factors required to establish program eligibility. Following a section on general provisions are rules regarding citizenship, State residency, eligible children, and household unit. The subchapter also includes rules on third party liability, persons sanctioned under TANF or AFDC rules, and other requirements such as application for other benefits including pensions, annuities, retirement and disabilities benefits. It also contains rules related to inmates of public institutions.

N.J.A.C. 10:79-4, Financial Eligibility, sets out income eligibility factors, prospective budgeting of income, countable income standards and resource eligibility.

N.J.A.C. 10:79-5, Administration, includes rules regarding eligibility determination agencies, administrative principles, confidentiality of information, materials distributed to applicants or eligible persons, nondiscrimination and case records.

N.J.A.C. 10:79-6, Beneficiary Rights and Responsibilities, explains notice of eligibility determination, agency decisions, fair hearing procedures, post-application client

responsibilities, grievances and appeals, right to a grievance review, premiums, personal contribution to care, limitations on cost-sharing and rules regarding copayments.

N.J.A.C. 10:79-7 explains beneficiary fraud and abuse policies, including when termination of eligibility may take place.

N.J.A.C. 10:72-8 explains presumptive eligibility, including the scope of services provided, the period of presumptive eligibility, the presumptive eligibility determination entities, the presumptive eligibility processing performed by the entities, the responsibilities of the Division of Medical Assistance and Health Services and of the county board of social services or the Statewide eligibility determination agency, the responsibilities of the applicant, the applicable notice and fair hearing rights, the scope of services during the presumptive eligibility period and the limitation on the number of presumptive eligibility periods.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Summary of Amendments

The Division is changing the heading of this chapter, "NJ KidCare," to "NJ FamilyCare-Children's Program." This Chapter was initiated in February 1998 as NJ KidCare, a combination program, which expanded Medicaid eligibility and added a separate state children's health insurance program.

Federal standards require the State to identify eligible children and enroll them in this program, which is now part of NJ FamilyCare. Therefore, throughout the chapter, the Division has replaced "NJ KidCare" with "NJ FamilyCare-Children's Program."

Through a subsequent Federal waiver, the State was given the opportunity to again expand the program to provide coverage for uninsured parents, caretakers and pregnant woman up to 200 percent of the Federal Poverty Level (FPL). Couples and single adults up to 100 percent of the FPL were also covered. Immigrants who entered the country legally for permanent residence, regardless of date of entry, were also offered subsidized insurance, supported with State dollars only.

The Division is deleting the term "sponsoring adult" and replacing it with the term "authorized agent" throughout the chapter, to conform to Federal language. In addition, the definition for "authorized agent" has been added to N.J.A.C. 10:79-1.2.

The Division is adding language pertaining to nondiscrimination throughout the text of the chapter, which will now specify that Title VI of the Federal Civil Rights Act of 1964 (Pub. L. 88-352) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 70b) and the Americans with Disabilities Act, Pub. L. 101-336, codified as 42 U.S.C. § § 12101 et seq. must be followed. These requirements prohibit discrimination on the grounds of race, color, national origin or handicap, in the administration of any program for

which Federal funds are received. (The program governed by this chapter is partially supported by Federal funds.)

The Division has amended all references to N.J.A.C. 10:81 and 10:82, the Division of Family Development's program rules, to N.J.A.C. 10:69, AFDC-Related Medicaid, which is the responsibility of the Division of Medical Assistance and Health Services (DMAHS).

Medical Assistance benefits are now separate and distinct from cash benefits. As a result of the "de-linking" of these benefit programs, the Division of Medical Assistance and Health Services administers medical benefits and the Division of Family Development administers cash benefits.

At N.J.A.C. 10:79-1.2, the Division has added the definition for "authorized agent." This change is expected to assist children in obtaining health care coverage, whether or not they reside with their families, since there are several categories of individuals who will be able to assist with an application for a child.

At N.J.A.C. 10:79-2.1, the Division is deleting the term "sponsoring adult" and replacing it with the term "authorized agent" and deleting the definition at N.J.A.C. 10:79-2.1(a)1, since the new definition at N.J.A.C. 10:79-1.2 includes the individuals previously listed at (a)1. The Division has added language to clarify that applications NJ FamilyCare-Children's program can be mailed to the CBOSS or to the eligibility determination agency.

At N.J.A.C. 10:79-2.3(b), the Division is amending the application process regarding

verification. At N.J.A.C. 10:79-2.3(g)4, the Division is amending the text to now read "Withdrawn: The authorized agent or applicant requests in writing or by telephone that eligibility for the NJ FamilyCare-Children's Program be no longer considered," in order to specify that the request can be made in writing or by telephone. The birth date and Social Security number of any child for whom benefits are sought must be provided but no longer verified. If there is a discrepancy then documentation shall be requested. The Division believes this will help reduce barriers in enrolling uninsured children.

At N.J.A.C. 10:79-2.4(a), the income level is increased from 185 percent to 200 percent of the Federal poverty level, to conform to the limits for Plan C and D

At N.J.A.C. 10:79-2.6, the Division added language to clarify that retroactive eligibility is available to cover unpaid medical bills for three months if the requirements are met in all or any of the three months prior to the date of application.

At N.J.A.C. 10:79-2.7(d), the Division added language for clarification as no case will be terminated before evaluating for continued eligibility.

At N.J.A.C. 10:79-2.8(c)1iv, the Division is adding language which states that "If an applicant is ineligible, the eligibility determination agency shall send an appropriate notice to the applicant within 30 days," to provide the applicant with prompt notification. Similar language is added to N.J.A.C. 10:79-2.8(d)2vi and 2.9(a)3vi.

At N.J.A.C. 10:79-2.9, the Division is amending the section heading to make clear that the rule governs transfers from one State-approved eligibility determination agency to another.

At N.J.A.C. 10:79-2.9, the Division has added language for clarification as the receiving agency has the responsibility to request premium payment and assist in the selection of a managed care organization.

At N.J.A.C. 10:79-3.4, the Division is replacing the word "children" with the word "child," as each child's eligibility is determined individually. In addition, the phrase " Children born after September 30, 1983" is being deleted, as it no longer applies because individuals born before that date are now adults.

N.J.A.C. 10:79-3.5(a)1, has been revised to include a stepparent in the household unit, at the option of the applicant, whether or not there is a common child, as this is the current Division policy.

N.J.A.C. 10:79-3.5(b) the Division is correcting a typographical error changing "June 16, 1996" to "July 16, 1996."

At N.J.A.C. 10:79-3.6, which lists those individuals whose income is counted as household income, the Division is removing the following language, "The legal custodian of a child under age 18" from those who are considered members of the

household unit, because the legal custodian has no responsibility for support. At N.J.A.C. 10:79-3.6(a) the Division has clarified language to include all children residing in the household as member of the household unit.

At N.J.A.C. 10:79-3.7, the word "and" is being replaced with "any" because the responsibility is the applicant's and beneficiary's to identify to the agency any third party liability that may apply.

At N.J.A.C. 10:79-3.8, the Division has made clarifications to the language in this subsection. The heading has been changed to clarify that the rule covers all health insurance coverage. At N.J.A.C. 10:79-3.8(a)10, the rule has been amended to allow enrollment for children who have reached their lifetime cap under their health insurance policy. At current subparagraph (b)1ii, the language after "The Child," "was born after September 30, 1983" is being deleted, as it no longer applies because individuals born before that date are now adults. The text has been changed to add, at N.J.A.C. 10:79-3.8(b)1i, ii and iii, text which indicates that a child who is age six or over with family income not exceeding 100 percent of the Federal poverty level, or does not exceed the AFDC standard after disregards, or under six, with family income not exceeding 133 percent of the Federal poverty level, may be eligible for Plan A.

At N.J.A.C. 10:79-3.8(f)3, Plans B and C are being deleted, as those eligible for Plans A, B and C can voluntarily terminate COBRA health insurance without a six-month penalty. However, a child is not allowed to participate in the NJ FamilyCare Children's Program Plan D for six months from the date COBRA coverage has been voluntarily

terminated. If COBRA has expired, there is no six-month penalty under any of the plans.

At N.J.A.C. 10:79-4.1(b), (c) and (d), the term "rounded down" has been revised to read, "rounded up," to benefit the applicant/beneficiary.

At N.J.A.C. 10:79-4.2, Prospective budgeting of income, the Division is deleting the phrase, "the full two-month period preceding the date of application or redetermination" and replacing it with a description of the actual practice, as follows: "To establish the best estimate, the one-month period immediately preceding the date of application or redetermination shall be used." The Division is adding text to state that, in the case of irregular payments, more than one month of income may be used. Additionally, the Division is recommending that all applicants be screened against the State wage/disability/unemployment databases and that documentation of income be pursued if a review of these databases shows significant unearned income.

At N.J.A.C. 10:79-4.3 and 4.4, the Division has added language that wages related to Census 2000 paid by the U.S. Census Bureau for temporary employment are not considered household income. N.J.A.C. 10:79-4.4(b) is being revised to reflect that the best estimate of income shall be based on an average of the household unit's income. To establish the best estimate, the one-month period immediately preceding the date of application or redetermination should be used. At N.J.A.C. 10:79-4.4(e), language has been added regarding the treatment of nonrecurring lump sum income.

At N.J.A.C. 10:79-5.5(b), the word "partisan" has been added before, "voting information," to conform to Federal regulations at 42 C.F.R. 431.307. The County Boards of Social Services (CBOSSs) are permitted to distribute voting materials, but are not permitted to distribute partisan voting material.

At N.J.A.C. 10:79-6.3(a) and 6.5(a), the Division has changed the no action period for a notice from "30 days" to "10 days," to conform to the Division's existing rules at N.J.A.C. 10:49-10.4(a).

At N.J.A.C. 10:79-6.9 the Division has revised the limitation of cost sharing to include Plan D. Limitation of cost sharing now include Plan C and D.

At N.J.A.C. 10:79-6.10 the Division has revised copayments to include Plan C. Copayments now include Plan C and D.

N.J.A.C. 10:79-8.3, has been amended at paragraph (a)2 to clarify that a local health department which provides primary care services shall be a presumptive eligibility (PE) determination agency.

At N.J.A.C. 10:79-8.4, the rule has been revised at paragraph (b)3, have added language so a "child (if appropriate)" is eligible to contact the eligibility determination agency by mailing an application to the Statewide eligibility determination agency or the

county board of social services in order to complete the application process. This change makes it consistent with 10:79-8.4(a).

At N.J.A.C. 10:79-8.4(b)3, the requirement for a "face to face interview" is deleted in order to eliminate barriers and make the program more accessible to more people. The deletion of the requirement also makes it more convenient by avoiding the need for transportation.

At N.J.A.C. 10:79-8.6(c), the Division is providing that a child's eligibility shall not terminate until the last day of the PE period, to provide time for notice.

N.J.A.C. 10:79-8.10, has been amended to clarify that the rule only pertains to children. Language has been added to provide for one continuous presumptive eligibility period within a 12-month cycle, beginning from the month in which the child initially received a determination of presumptive eligibility.

As the Division has provided a 60-day comment period for the proposed readoption with amendments, this proposal is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The social impact of the rules proposed for readoption with amendments on uninsured children should be positive, since it is estimated that over 75,213 additional children in

the State of New Jersey who are not enrolled in NJ FamilyCare may still be eligible to secure health care coverage and access to primary and preventive health care. There is for State Fiscal Year 2002, an enrollment of 94,709 in the program. Providers of medical care should be impacted positively, since they will be able to receive reimbursement for health care services provided to children who otherwise could not access health care, since they could not afford to pay for it. Hospitals which provide charity care and which provide acute care services should be positively impacted, since children will now be able to access primary and preventive health care services, which will prevent the need for acute care services which hospitals were otherwise providing as charity care.

Economic Impact

It is estimated that for State Fiscal Year 2002, approximately 94,709 beneficiaries were enrolled in NJ KidCare (NJ FamilyCare-Children's Program) which increased the Division's expenditures for health care coverage to \$97.9 million (Federal and State share combined) annually for the program. There is also an estimated additional 75,213 individuals who qualify for NJ KidCare (NJ FamilyCare-Children's Program). This should be a positive economic impact on providers, including HMOs, because providers will now be reimbursed for services that they were otherwise providing as charity care.

Federal Standards Statement

The references in this statement are to the Social Security Act, unless otherwise stated, as amended by the Balanced Budget Act of 1997. The Federal standards contained in

Title XIX and Title XXI of the Social Security Act allow a state, at its option, to provide health care coverage for uninsured children under age 19 whose income does not exceed 200 percent of the Federal poverty level. The law extends to the states a degree of leeway in the manner in which coverage is provided to these children.

Sections 2101 through 2103 and 2110 of the Act (42 U.S.C. §§1397aa, 1397bb, 1397cc and 1397jj); Section 1902(a)(10)(A)(ii) of the Act (42 U.S.C. §§1396a(a)(10)(A)(ii)); and Section 1905 of the Act (42 U.S.C. §1396(d)) have been reviewed by the Division in regard to the rules proposed for readoption with amendments. The rulemaking is not in excess of the Federal standards and does not provide for payments that exceed the Federal requirements.

In addition, Section 2102 of the Act, 42 U.S.C. §1397bb(b)(1)(A), specifies requirements regarding the eligibility of certain children for the NJ FamilyCare-Children's Program (New Jersey's State Children's Health Insurance Program, or SCHIP), including gathering information regarding access to, or coverage under, other health coverage programs as a condition of eligibility. The Federal standards anticipate that a state will establish policies to address the “crowd-out” issue, that is, policies which will discourage applicants from dropping insurance coverage they may have in order to enroll in the state health coverage program. The provisions in this chapter regarding other health insurance coverage meet and do not exceed the Federal standards.

Jobs Impact

There is no anticipated gain or loss of jobs in New Jersey which would result from the proposed readoption with amendments.

Agriculture Industry Impact

The rules proposed for readoption with amendments is not expected to have an impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The rules proposed to readoption with amendments impose eligibility requirements, as described in the Summary, on applicants and current beneficiaries of the Division services. A regulatory flexibility analysis regarding these individuals is not required.

A regulatory flexibility analysis is necessary because some medical care providers and some eligibility determination agencies may be considered small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Some medical care providers who determine eligibility do not generally employ more than 100 full-time people, although hospitals, a common source of presumptive eligibility determinations, all employ more than 100 full-time staff members. Federally qualified health centers and local health departments may employ fewer than 100 staff members.

The rules proposed for readoption with amendments impose compliance or reporting requirements on eligibility determination agencies as described in the Summary above. Although the eligibility rules may be different from program to program, the verification

requirements remain the same for NJ KidCare (NJ FamilyCare-Children's Program) Plans B and C, as they are for NJ KidCare (NJ FamilyCare-Children's Program)-Plan A. All eligibility information of the applicant on initial application and redetermination must be collected and verified by the eligibility determination agency entity and must be reported to the Division. Eligibility determination agencies are required to collect premiums, if premiums are required, which will impose additional recordkeeping requirements on them. In addition, all eligibility factors delineated in this chapter, and in the proposed amendments, must be considered, as appropriate, when eligibility is determined or redetermined. These requirements must be the same for all, regardless of the size of the eligibility determination agency, because accurate and complete records must be maintained for all collections and disbursements of these funds. In addition, all applicants must be treated equally, and each application must be evaluated in the same manner, whether the determination agency is regarded as a small business or a large business. In the interests of equity, the requirements cannot vary because of business size.

Additional staff may be needed by the eligibility determination agencies to process applications. There could be some capital costs associated with the amendments, if eligibility determination agencies have to add additional equipment or space to accommodate additional staff to process the eligibility determinations. However, this is not expected to be necessary.

The rules proposed for readoption with amendments also impose additional compliance, recordkeeping and reporting requirements on medical care providers. Providers are required to collect personal contribution to care (co-payments) from beneficiaries, which imposes compliance, record keeping and reporting requirements on providers. However, providers of health care services already collect similar personal contributions to care from individuals who are covered under other health insurance policies. The compliance, recordkeeping and reporting requirements on providers related to the collection of the personal contribution to care must be the same for all providers, regardless of size. The collection of the contribution must be complied with, regardless of business size, and the reporting and recordkeeping must be consistent for all providers because accurate and complete records must be maintained for all collections. This rulemaking does not anticipate that providers will incur significant costs in the collection of the personal contribution to care, because many medical care providers are required to collect similar co-payments for individuals covered under other health care coverage policies, as provided in the private sector. Since medical care providers already have staff and procedures to collect these payments for other health insurance coverage, this requirement for NJ KidCare (NJ FamilyCare-Children's Program) does not impose a significant amount of additional work, or require additional staff or equipment. This requirement will not impose capital cost requirements on providers or require that professional services be employed.

Smart Growth Impact

The Department anticipates that the rules proposed for readoption will have no impact on smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:79.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets **[thus]**):

CHAPTER 79

[NJ KIDCARE] NJ FAMILYCARE-CHILDREN'S PROGRAM

SUBCHAPTER 1. INTRODUCTION

10:79-1.1 Purpose and scope

(a) [NJ KidCare] **NJ FamilyCare-Children's Program** is a program administered by the Division of Medical Assistance and Health Services, Department of Human Services, to provide plan-defined health care benefits to certain children.

(b) The purpose of the rules contained within this chapter is to:

1. Set forth eligibility criteria for the [NJ KidCare program] **NJ FamilyCare-Children's Program**;

2. - 3. (No change.)

(c) Because the eligibility criteria established by the rules contained within this chapter are more liberal than those applicable under AFDC-related Medicaid and SSI-related Medicaid, children losing AFDC-related eligibility because of financial reasons should be evaluated under the provisions of this chapter for the possibility of [NJ KidCare] **NJ FamilyCare-Children's Program** eligibility.

(d) Children eligible under this chapter are eligible for [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A, Plan B, Plan C or Plan D services which are set forth in N.J.A.C. 10:49-5. **NJ FamilyCare-Children's Program-Plan A is a means-tested Federal entitlement program.**

(e) (No change.)

(f) Persons financially ineligible for Medicaid under the provisions of N.J.A.C. **10:69**, 10:71[,], **and** 10:72[, 10:81 and 10:82] and who are income ineligible for [NJ KidCare] **NJ FamilyCare-Children's Program** under the provisions of this chapter shall be evaluated for eligibility as Medically Needy under the provisions of N.J.A.C. 10:70.

[(g) Children eligible under this chapter are eligible for NJ KidCare-Plan A services which are described in N.J.A.C. 10:49-5. The NJ KidCare-Plan A benefit program is a means tested Federal entitlement program.]

10:79-1.2 Definitions

Words and terms used in this chapter shall have the meanings specified below, unless specifically defined otherwise in this chapter, or **the** context clearly indicates otherwise.

"Authorized agent" means a parent, guardian, caretaker or any other individual 18 or older who has sufficient information to assist in making an application for NJ FamilyCare-Children's Program children, including:

1. A staff member of a public or private welfare or social service agency of which the child for whom assistance is

sought is a client and who has been designated by the agency to act as the child's agent;

2. An attorney or physician of the person seeking NJ FamilyCare-Children's Program benefits;

3. A staff member of an institution or facility in which the individual is receiving care and who has been designated by the institution or facility to so act; or

4. A legal guardian.

"Caretaker" [relative] or caretaker adult" means the [legally] responsible adult or adults residing with the child or children for whom the application or redetermination for [NJ KidCare] NJ FamilyCare-Children's Program is being made. This term does not impose a blood relationship to the caregiver as a prerequisite for applying for services on behalf of a child.

"Child" is an individual from birth through the age of 18 who is otherwise not eligible for Medicaid pursuant to N.J.A.C. 10:69, 10:71[,], or 10:72[,], 10:80 or 10:81].

. . .

"Eligibility determination agency" means an entity, including, but not limited to, a public or private agency, either governmental, non-profit, or for profit, with which the Division of Medical Assistance and Health Services has a contract or agreement to perform some or all of the eligibility-related functions for [NJ KidCare] NJ FamilyCare-Children's Program.

. . .

"[NJ KidCare] **NJ FamilyCare-Children's Program**" means the program administered by the Division of Medical Assistance and Health Services, which provides health care benefits to certain children under the authority of N.J.S.A. 30:4D et seq. and P.L. 1997, c.272.

...

["sponsoring adult" means an individual 18 or older who may assist in making an application for NJ KidCare children.]

SUBCHAPTER 2 CASE PROCESSING

10:79-2.1 Application

(a) Applications for "[NJ KidCare] **NJ FamilyCare-Children's Program**" benefits can be obtained from various locations by calling 1-800-701-0710. Applications for Plan A benefits can be forwarded to the [CWA] **CBOSS** in the county in which the applicant resides or to any other eligibility determination agencies designated by the Division of Medical Assistance and Health Services. Applications for Plan B, C and D shall be forwarded to PO Box 4818, Trenton, N.J. 08650-4818. **Applications for NJ FamilyCare-Children's Program can be mailed to the CBOSS or to the eligibility determination agency.** The application as well as any addenda to that form as prescribed by the Division of Medical Assistance and Health Services, should be completed by the [sponsoring adult of a child for whom NJ KidCare is sought; or by an] authorized agent of the child; or by the child if the child is an emancipated individual.

[1. A sponsoring adult is defined as:

- i. A parent;
- ii. A caretaker relative;
- iii. Other relatives by blood or marriage;
- iv. A staff member of a public or private welfare or social service agency of which the child for whom assistance is sought, is a client and who has been designated by the agency to so act;
- v. An attorney or physician of the person seeking NJ KidCare benefits; or
- vi. A staff member of an institution or facility in which the individual is receiving care and who has been designated by the institution or facility to so act.

2. A legal guardian shall be recognized as an authorized agent to execute an application on behalf of any individual.】

(b) The eligibility determination agency, under policies and procedures established by the Division of Medical Assistance and Health Services, has the

direct responsibility in the application process to:

1. Inform the [sponsoring adult] **authorized agent** or applicants of the purpose of and the eligibility requirements for the [NJ KidCare program] **NJ FamilyCare-Children's Program**, including their rights and responsibilities;
2. (No change.)
3. Assist the [sponsoring adult] **authorized agent** or program applicant in exploring eligibility for program benefits;
4. Make known to the [sponsoring adult] **authorized agent** or program applicant the appropriate resources and services both within the agency and in the community; and
5. Assure the prompt and accurate submission of eligibility data to the [NJ KidCare] **NJ FamilyCare-Children's Program** Eligibility File for eligible children and prompt notification to the [sponsoring adult] **authorized agent** or ineligible program applicant of the reason for their ineligibility.

(c) As part of the application process, a [sponsoring adult] **authorized agent** or applicant for [NJ KidCare] **NJ FamilyCare-Children's Program** has the responsibility to:

1. - 2. (No change.)

10:79-2.2 Interview

The eligibility determination agency may, at the request of the [sponsoring adult] **authorized agent** or applicant, conduct a personal face-to-face interview with the applicant, [sponsoring adult,] or the authorized agents as part of the process of determining program eligibility.

10:79-2.3 Application processing

(a) The Statewide eligibility determination agency shall screen all mail-in and walk-in applications against the existing Medicaid eligibility file. Applications which involve family members who are already enrolled in the Medicaid program [will] **shall** be forwarded to the applicable [county welfare] **eligibility determination** agency for inclusion in the existing case as appropriate. The [county welfare] **eligibility determination** agencies are required to refer any child found not eligible for Medicaid or any child losing eligibility for Medicaid or [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A to the [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan B, C and D program. The [CWA] **CBOSS** should process all applications mailed or forwarded to them or all walk-ins for [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A if the child's family income appears to meet the income standards.

(b) The eligibility determination agency is required to verify all factors related to eligibility for the [NJ KidCare program] **NJ FamilyCare-Children's Program**.

Factors subject to verification include:

1. Birth date: The birth date of any child for whom benefits are sought must be [verified] **provided. If there is a discrepancy between the age reported by the applicant and the age appearing on the Medicaid record, and the discrepancy affects eligibility or categorical requirement, then documentation shall be requested;**

2. - 3. (No change.)

4. Household composition: The eligibility determination agency must verify the household composition in order to ascertain which persons will be included in the determination of eligibility for [NJ KidCare] **NJ FamilyCare-Children's Program** benefits;

5. Social Security number: The Social Security number must be [verified] **provided. Verification shall be required when subsequent information indicates a problem with the social security number;**

6. - 7. (No change.)

(c) The eligibility determination agency shall use documentary evidence as the primary source of verification. Documentary evidence is written confirmation of the family's circumstances. It is the responsibility of the [sponsoring adult] **authorized agent** or applicant to obtain or to assist the eligibility determination agency in obtaining any required documentation.

(d) (No change.)

(e) In the absence of credible verification of all eligibility factors, eligibility for the [NJ KidCare program] **NJ FamilyCare-Children's Program** may not be established.

(f) For any application for [NJ KidCare] **NJ FamilyCare-Children's Program** benefits under the provisions of this chapter, the eligibility determination agency must accomplish disposition of the application as soon as all factors of eligibility are met and verified but not later than 30 days from the date of application (or from the date of the inquiry form PA-1C, if applicable). Exceptions to the timeliness standard appear in (f)2 below.

1. "Disposition of the application" means the official determination by the eligibility determination agency of eligibility or ineligibility of the applicant(s) for [NJ KidCare] **NJ FamilyCare-Children's Program**.

2. - 4. (No change.)

(g) The following actions **documented by the eligibility determination agency** on an application qualify as disposition of an application for purposes of the processing standard:

1. Approved: The applicant has been determined eligible for [NJ

KidCare] **NJ FamilyCare-Children's Program;**

2. Denied: The applicant has been determined ineligible for [NJ

KidCare] **NJ FamilyCare-Children's Program;**

3. Dismissed: A decision by the eligibility determination agency that the application process need not be completed because:

i. The child has died **except that:**

(1) [(t) **The** application process must be completed if there are unpaid medical bills for covered services in the retroactive coverage period or subsequent to program application[]] **if applicable (Plan A only);**

ii. - iii. (No change.)

iv. The child has moved out of the State during the application process and there are no unpaid bills for the time period beginning with the retroactive eligibility period up to the date of relocation **for Plan A only;** and

4. Withdrawn: The [sponsoring adult] **authorized agent** or applicant requests **in writing or by telephone** that eligibility for the [NJ KidCare program] **NJ FamilyCare-Children's Program** be no

longer considered.

10:79-2.4 Application processing for the unborn [NJ KidCare] NJ FamilyCare-Children's Program-Plan C and Plan D

(a) The eligibility determination agency may accept and process an application for an unborn child in the last trimester of the pregnant woman's term, but whose income is greater than [185] **200** percent, but [no] **not** greater than 350 percent of the Federal poverty level.

(b) - (d) (No change.)

10:79-2.5 Date of initial eligibility

(a) Eligibility under [NJ KidCare] NJ FamilyCare-Children's Program-Plan A is effective back to the first day of the month of application provided that all eligibility requirements are met in that month. If eligibility requirements are not met during the month of application, a future eligibility date will be established as of the first day of the month the beneficiary meets all eligibility requirements.

(b) (No change.)

10:79-2.6 Retroactive eligibility-Plan A only

(a) Retroactive eligibility is available to cover unpaid medical bills for three months prior to the date of application if the requirements are met in [each] **all or**

any of the three months. Retroactive eligibility shall not be available for any period prior to the start of the program. For the purposes of this chapter, the start of the program for children eligible pursuant to N.J.A.C. 10:79-3.4(a)2, whose income is [no] not more than 133 percent of the Federal poverty level is February 1, 1998.

(b) If the applicant for [NJ KidCare] NJ FamilyCare-Children's Program-Plan A benefits has unpaid medical bills from the retroactive eligibility period, the eligibility determination agency shall assist the applicant with applying for payment of unpaid medical bills. Retroactive eligibility shall not be available for any period prior to the start of the program.

(c) There is no retroactive eligibility coverage for children eligible for [NJ KidCare] NJ FamilyCare-Children's Program -Plan B, C or D.

10:79-2.7 Redetermination of eligibility

(a) Eligibility for [NJ KidCare] NJ FamilyCare-Children's Program under this chapter shall be redetermined, with the completion of a redetermination form, as indicated in (a)1 and 2 below. The redetermination form may be mailed. A face-to-face interview is not required.

1. Eligibility for [NJ KidCare] NJ FamilyCare-Children's Program-Plan A must be redetermined no later than 12 months following the month

of initial eligibility or the last redetermination.

2. Eligibility for [NJ KidCare] **NJ FamilyCare-Children's Program-**
Plan B, C or D must be redetermined every 12 months.

(b) - (c) (No change.)

(d) No case shall be terminated before evaluating for continued eligibility using data available from other sources, such as the Food Stamp or WorkFirst New Jersey Programs.

10:79-2.8 Case transfer between [CWA's] eligibility determination agencies

(a) - (b) (No change.)

(c) For persons who move from the county in which application for [NJ KidCare] **NJ FamilyCare-Children's Program** is made prior to the determination of eligibility or ineligibility:

1. The county in which the application was made has the responsibility to:

i. (No change.)

ii. If determined eligible for the [NJ KidCare] **NJ FamilyCare-Children's Program** -Plan A program, accrete the eligible

person(s) to the [NJ KidCare] **NJ FamilyCare-Children's Program** Eligibility File with the correct effective date of [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A program eligibility and the new address in the receiving county; [and]

iii. If case is determined eligible, within five working days of that determination, transfer the case record material to the receiving county in accordance with (d)1i through iv below; **and**

iv. If ineligible, the eligibility determination agency shall send an appropriate notice of ineligibility to the applicant within 30 days.

2. (No change.)

(d) For cases which are determined eligible for the [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A program:

1. (No change.)

2. The receiving county shall have the responsibility to:

i. -v. (No change.)

- vi. Update the [NJ KidCare] **NJ FamilyCare-Children's Program** Eligibility File, as necessary, including entry of a new case number. If the case is determined eligible for [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A in the receiving county, there shall be no interruption of entitlement. If the case is determined ineligible for [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A in the receiving county, eligibility shall be terminated, subject to timely and adequate notice, [and] the previously eligible person **shall be** terminated on the [NJ KidCare] **NJ FamilyCare-Children's Program** Eligibility File **and the eligibility determination agency shall send an appropriate notice of ineligibility to the applicant within 30 days;**
- vii. Notify the county of origin of the date eligibility for [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A will begin or will be terminated in the receiving county; and
- viii. Issue a [NJ KidCare] **NJ FamilyCare-Children's Program** identification card with the new number if necessary.

10:79-2.9 Case transfer from one State approved eligibility determination agency to another

- (a) When an individual's eligibility transfers from one State approved eligibility

determination agency to another, responsibility for the case shall be transferred in a manner so as not to adversely affect the rights of any individual to program entitlement.

1. For individuals who, because of an initial screening, it is determined that the eligibility determination agency must transfer the application to the appropriate agency, the agency of origin has the responsibility to:

i. (No change.)

ii. Send the above materials, a cover letter specifying that the [application case] **file** is being transferred and requesting written or verbal acknowledgment of receipt;

2. (No change.)

3. The receiving agency shall have the responsibility to:

i. - v. (No change.)

vi. Update the [NJ KidCare] **NJ FamilyCare-Children's Program** Eligibility File, as necessary, including entry of a new case number. If the case is determined eligible for [NJ KidCare] **NJ FamilyCare-Children's Program** in the receiving agency, there shall be no interruption of entitlement. If the case is determined

ineligible for [NJ KidCare] **NJ FamilyCare-Children's Program** in the receiving agency, eligibility shall be terminated, subject to timely and adequate notice, and the previously eligible person **shall be** terminated on the [NJ KidCare] **NJ FamilyCare-Children's Program** Eligibility File **and the eligibility determination agency shall send an appropriate notice of ineligibility to the applicant within 30 days;**

vii. Notify the agency of origin of the date eligibility for [NJ KidCare] **NJ FamilyCare-Children's Program** will begin or will be terminated in the receiving agency; [and]

viii. Issue a [NJ KidCare] **NJ FamilyCare-Children's Program** identification card with the new number if necessary;

ix. **Request premium payment required; and**

x. **Assist in the selection of a managed care organization (HMO), as needed.**

SUBCHAPTER 3 NONFINANCIAL ELIGIBILITY FACTORS

10:79-3.1 General provisions

(a) (No change.)

(b) The applicant's or the [sponsoring adult's] **authorized agent's** statements

regarding the child or children's eligibility, as set forth in the application form, are evidence. The statements must be consistent and meet prudent tests of credibility. Incomplete or questionable statements shall be supplemented and substantiated by corroborative evidence from other pertinent sources.

10:79-3.2 Citizenship

(a) In order to be eligible for the [NJ KidCare program] **NJ FamilyCare-Children's Program**, an individual must be a citizen of the United States, or an eligible alien in accordance with this chapter.

1.(No change.)

(b) The following aliens, if present in the United States prior to August 22, 1996, and if otherwise meeting the eligibility criteria, are entitled to full [NJ KidCare] **NJ FamilyCare-Children's Program** benefits:

1. -11. (No change.)

12. Certain legal aliens who are victims of domestic violence and when there is a substantial connection between the battery or cruelty suffered by an alien and his or her need for [NJ KidCare] **NJ FamilyCare-Children's Program** benefits, subject to certain conditions described below:

i. - iv. (No change.)

v. In addition to the conditions described above, if the individual responsible for the battery or cruelty continues to reside in the same household as the individual who was subjected to such battery or cruelty, then the alien shall be ineligible for [NJ KidCare] **NJ FamilyCare-Children's Program** benefits.

vi. The eligibility determination agency shall apply the definitions "battery" and "extreme cruelty" and the standards for determining whether a substantial connection exists between the battery or cruelty and the need for [NJ KidCare] **NJ FamilyCare-Children's Program** as issued by the Attorney General of the United States under his or her sole and unreviewable discretion.

(c) The following aliens entering the United States on or after August 22, 1996, and if otherwise meeting the eligibility criteria, are entitled to [NJ KidCare] **NJ FamilyCare-Children's Program** benefits:

1. 12. (No change.)

(d) (Reserved)

(e) Any alien who is not an eligible alien as specified in (b) and (c) above, is ineligible for [NJ KidCare] **NJ FamilyCare-Children's Program** benefits. However, any such alien may, if a resident of New Jersey and if he or she meets

all other [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A eligibility requirements, be entitled to coverage for the treatment of an emergency medical condition only.

(f) Persons claiming to be **naturalized** citizens and eligible aliens must provide the eligibility determination agency with documentation of citizenship or alien status.

(g) As a condition of eligibility, all applicants for [NJ KidCare] **NJ FamilyCare-Children's Program** (except for those applying solely for services related to the treatment of an emergency medical condition) [must sign a declaration under penalty of perjury that] **shall declare whether or not** they are a citizen of the United States or an alien in a satisfactory immigration status. In the case of a child or incompetent applicant, another individual on the applicant's behalf [must complete the same written declaration under penalty of perjury] **shall declare whether or not they are citizen of the United States or an alien in a satisfactory immigration status.**

1. (No change.)

2. The following sets forth acceptable documentation for eligible aliens:

i. -ii. (No change.)

iii. Refugees--INS Form I-94 annotated with stamp showing entry as refugee under section 207 of the Immigration and Nationalization Act and date of entry into the United States; INS Forms I-688B annotated "274a. 12(a)(3)," I-766 annotated "A3," or I-571. Refugees usually adjust to Lawful Permanent Resident status after 12 months in the United States, but for purposes of determining [NJ KidCare] **NJ FamilyCare-Children's Program** eligibility they are considered refugees. Refugees whose status has been adjusted will have INS Form I-551 annotated "RE-6," "RE-7," "RE-8," or "RE-9."

iv. - x. (No change.)

xi. Amerasian Immigrant-INS Form I-551 with the code AM1, AM2, or AM3 or passport stamped with an unexpired temporary I-551 showing a code [AN6] **AM6**, AM7 or AM8.

3. For aliens subject to the five-year waiting period before eligibility for [NJ KidCare] **NJ FamilyCare-Children's Program** can be established, the date of entry into the United States shall be determined as follows:

i. On INS Form I-94, the date of admission should be found on the refugee stamp. If missing, the [county welfare] **eligibility determination** agency should contact the INS local district office by filing Form G-845, attaching a copy of the document.

ii. - iii. (No change.)

4. (No change.)

10:79-3.3 State residency

(a) In order to be eligible for the [NJ KidCare program] **NJ FamilyCare-Children's Program**, the applicant/**child** must be a resident of the State of New Jersey. The term "resident" shall be interpreted to mean [a caretaker adult with whom the child is residing] **an applicant who** is living in the State voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom.

1. If the caretaker adult leaves New Jersey with the child or the applicant with the intent to establish permanent residence elsewhere, or for an indefinite period for purposes other than a temporary visit, the child or applicant ceases to be eligible to receive [NJ KidCare] **NJ FamilyCare-Children's Program** from this State.

2. When the [caretaker relative] **authorized agent** of a child or the applicant enters the State in order to receive medical care and applies for [NJ KidCare] **NJ FamilyCare-Children's Program** to meet all or a portion of the costs of such care, the fact that the immediate purpose of the move was to secure medical care does not, in and of itself, have the effect of making the child/applicant ineligible for the [NJ KidCare program] **NJ**

FamilyCare-Children's Program. It is the responsibility of the eligibility determination agency to evaluate all such cases and to make an eligibility determination, considering carefully all the following criteria:

- i. (No change.)
 - ii. Whether there is clear expression of intent on the part of the [caretaker relative] **authorized agent** or applicant to remain permanently in this State;
 - iii. Whether there is objective evidence that the [caretaker relative] **authorized agent** or applicant child has, in fact, abandoned or not abandoned residence in the State from which he or she came; and
 - iv. Whether the state in which the [caretaker relative] **authorized agent** or applicant previously resided recognizes him or her as having continuing eligibility under that state's Medicaid or Title XXI children's health assistance program (or other program providing payment for medical care) of that jurisdiction.
3. If, after full consideration of the [above] factors **in this subsection**, the eligibility determination agency is satisfied that the [caretaker relative] **authorized agent** or applicant **child** has become a resident of this State, [NJ KidCare] **NJ FamilyCare-Children's Program** eligibility may be established **as long as all other**

eligibility criteria are met.

10:79-3.4 Eligible children

(a) [The following children] A child who meets all eligibility criteria of this chapter [are] shall be eligible for [NJ KidCare] NJ FamilyCare-Children's Program benefits, as follows:

[1. Children born after September 30, 1983; or]

[2.] 1. A child [not otherwise eligible under (a)1 above] who has not attained the age of 19.

(b) Any child receiving [NJ KidCare] NJ FamilyCare-Children's Program benefits under the provisions of this chapter who but for the age limits in (a)1 above would be eligible [NJ KidCare] NJ FamilyCare-Children's Program under the provisions of this chapter and who is receiving inpatient services covered by [NJ KidCare] NJ FamilyCare-Children's Program at the time he or she reaches the age limit, will continue to be eligible for NJ KidCare until the end of the stay for which the inpatient services are furnished.

10:79-3.5 Household unit for [NJ KidCare] NJ FamilyCare-Children's Program-Plan A

(a) For [NJ KidCare] NJ FamilyCare-Children's Program-Plan A, the term "household unit" means those persons whose income is counted in the

determination of eligibility under the provisions of this chapter. The following persons, if they reside with the program applicant or beneficiary, shall be considered members of the household unit:

1. For a child:

i. - iii. (No change.)

iv. At the option of the [sponsored relative] **authorized agent** or the applicant, the child's stepparent, **whether or not there is a common child**. If the sponsored relative or applicant elects not to include the stepparent in the household unit, his or her income will not be included in the determination of eligibility except to the extent that he or she makes it available to the eligible members, and the child's spouse, if applicable.

(b) Any person who is a recipient of TANF or SSI or who would have been eligible for AFDC using the rules in existence as of [June 16, 1996] **July 16, 1996** will not be included in the household unit. Any person whose income and resources have been deemed to be an eligible SSI beneficiary shall likewise not be included in the household unit unless that person is applying for benefits under this chapter.

(c) (No change.)

10:79-3.6 Household unit for [NJ KidCare] NJ FamilyCare-Children's Program-Plan B, C and D

(a) For Plan B, C or D, the term household unit means those persons whose income is counted in the determination of eligibility under the provisions of this chapter. The following persons, if they reside with the program applicant or beneficiary, shall be considered as members of the household unit:

1. - 3. (No change.)

4. The natural or adoptive father of any children in the household unit;
and

5. The step-parent, if the step-parent is married to the natural parent
and his or her children residing in the household [; and

6. The legal custodian of a child under age 18].

10:79-3.7 Third party liability

(a) Program applicants and beneficiaries are required to identify to the eligibility determination agency [and] **any** third party (individual, entity, or program) that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or beneficiary.

(b) Any [sponsoring adult] **authorized agent** or applicant who applies for [NJ KidCare] **NJ FamilyCare-Children's Program** who is eligible pursuant to

N.J.A.C. 10:79-3.4(a)1, by virtue of the application for benefits, is deemed to have assigned to the Commissioner of the Department of Human Services any rights to support for the applicant for the purpose of medical care as determined by a court or administrative order and any rights to payment for care from any third party. [Sponsoring adults] **Authorized agents**, program applicants and beneficiaries are required to cooperate in the identification of and the obtainment of any such rights.

(c) The eligibility determination agency shall advise [sponsoring adults] **authorized agents**, program applicants and beneficiaries of the terms of the assignment and the consequences thereto.

(d) The eligibility determination agency shall require [that] the [sponsoring adult] **authorized agent to** pursue any coverage for health care services available through a group health plan for which the child is eligible that is noncontributory or otherwise results in no premium contribution cost to the household unit.

10:79-3.8 [Other health] Health insurance coverage eligibility rules

(a) For the purposes of this chapter, the term "health insurance" does not include:

1. - 9. (No change.)

10. An insurance plan in which the child's lifetime total cap has been reached;

Recodify existing 10. - 11 as 11. - 12. (No change in text.)

(b) With respect to a child determined eligible for [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A, who meets the requirements listed below, other health insurance coverage shall not preclude that child from enrolling under [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A.

1. A child who has other health insurance may be eligible for [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A, if:

i. The **child is age six or over and** family income does not exceed 100 percent of the Federal poverty level; [and]

ii. The child is age six or over and family income does not exceed the AFDC standard after disregards; or

[ii.] iii The child [was born after September 30, 1983] is under the age of six and the family income does not exceed 133 percent of the Federal Poverty Level (FPL).

(c) With respect to a child who does not meet the requirements of (b) above, a child shall be precluded from [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A eligibility if:

1.- 2. (No change.)

3. The child is covered or is eligible for coverage under a group health plan or otherwise under a group health plan sponsored or self-funded by a [governing] **government** unit.

(d) Eligibility for a coverage under a health insurance policy which is not readily accessible to the child shall not preclude the child from eligibility for [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A.

1. (No change.)

2. In the case where the coverage is available under an absent parent's policy, the custodial parent shall be allowed to show good cause why the coverage is not available. Good cause may [not be, but is not] **include, but shall not be** limited to, concern of physical or emotional abuse.

(e) With respect to a child who does not meet the requirements of (b) above, a child shall be precluded from [NJ KidCare] **NJ FamilyCare-Children's Program**-Plans B, C or D eligibility if:

1. The child is covered or is eligible for coverage under a non-contributory group health plan or otherwise under a group health plan resulting in no premium contribution cost to the household unit within six months prior to the date of application for [NJ KidCare] **NJ FamilyCare-Children's Program**-Plans B, C or D;

2. The child is currently covered or was covered under any other health insurance plan within six months prior to the date of application for [NJ KidCare] **NJ FamilyCare-Children's Program**-Plans B, C and D, or

3. (No change.)

(f) Exceptions to (e) above are listed below:

1. Coverage under a contract for health insurance obtained as an enrollee or family member of an enrollee, or participating in Health Access New Jersey shall not preclude a child from being eligible for [NJ KidCare] **NJ FamilyCare**-Plans B, C and D.

2. Coverage under a government funded, non-employee based health insurance program which is targeted for low-income uninsured shall not preclude a child from being eligible for [NJ KidCare] **NJ FamilyCare-Children's Program**-Plans B, C and D.

3. Coverage of a child in accordance with the Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation rights or other continuation rights available under State law shall not preclude a child from being eligible for [NJ KidCare] **NJ FamilyCare-Children's Program**-Plans B, C and D, if the reason for the termination is expiration of the COBRA continuation rights. If the coverage was voluntarily terminated by the family prior to the expiration of continuation rights, the child is

precluded only from [NJ KidCare-Plans B, C and D eligibility] participation in the NJ FamilyCare Children's Program Plan D for six months[,] from the date of COBRA termination.

4. [The child was covered by Medicaid.
 - i. Eligibility] A child who is eligible for Medically Needy with [a] an unmet "spend-down" liability. [shall] This unmet "spend-down" liability shall not preclude a child from being eligible for [NJ KidCare] NJ FamilyCare-Children's Program-Plans B, C and D.

5. Coverage or eligibility for coverage, as applicable, under a group health benefits plan, whether sponsored through a governing entity or private employer, for the six month period shall not be used to preclude the child's eligibility for [NJ KidCare] NJ FamilyCare-Children's Program-Plans B, C and D when:

- i. -iv. (No change.)

10:79-3.9 Persons sanctioned under TANF or AFDC rules

Persons who are ineligible for TANF or would have been ineligible for AFDC-related Medicaid using the rules in effect as of **July 16, 1996**, due to the imposition of a sanction of ineligibility for a factor of AFDC or TANF eligibility that does not apply in [NJ KidCare] NJ FamilyCare-Children's Program (such as

noncooperation with work registration) shall have eligibility determined under this chapter without regard to the sanction. (For persons ineligible for TANF **or AFDC-related Medicaid** due to a period of ineligibility imposed as a result of the receipt of lump sum income, see N.J.A.C. 10:79- 4.3(c)).

10:79-3.10 Application for other benefits

(a) As a condition of eligibility for the NJ [NJ KidCare] **NJ FamilyCare-Children's Program** program, [sponsoring adults] **authorized agents** on behalf of applicants, applicants, and beneficiaries are required to take all necessary steps to obtain any health insurance, annuities, and disability benefits to which the child is entitled, unless they can show good cause for not doing so.

1.(No change.)

10:79-3.11 Inmates of public institutions

(a) Any child who is an inmate of a public institution is ineligible for the [NJ KidCare program] **NJ FamilyCare-Children's Program**).

(b) Any child who is incarcerated in a Federal, State, or local correction facility (prison, jail, detention center, reformatory, etc.) is not eligible for the [NJ KidCare program] **NJ FamilyCare-Children's Program**.

SUBCHAPTER 4 FINANCIAL ELIGIBILITY

10:79-4.1 Income eligibility limits

(a) Income limits for children through 18 years covered under the provisions of this chapter for [NJ KidCare] **NJ FamilyCare-Children's Program** -Plan A shall be based on 133 percent of the poverty income guideline as defined by the U.S. Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). The monthly income standard will be 1/12 of 133 percent of the annual poverty income guideline rounded up to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(b) Income limits for children through 18 years covered under the provisions of this chapter for Plan B shall be no greater than 150 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). The monthly income standard will be one-twelfth of 150 percent of the annual poverty income guideline rounded **[down] up** to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(c) Income limits for children through 18 years covered under the provisions

of this chapter for Plan C shall be no greater than 200 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). The monthly income standard will be one-twelfth of 200 percent of the annual poverty income guideline rounded [down] up to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(d) Income limits for children through 18 years covered under the provisions of this chapter for Plan D shall be no greater than 350 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35). Net income limits shall be no greater than 200 percent of the poverty income guideline after the application of disregards as defined at N.J.A.C. 10:79-4.4(c). The monthly income standard will be one-twelfth of 350 percent of the annual poverty income guideline rounded [down] up to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline shall be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(e) In order to be eligible for [NJ KidCare] **NJ FamilyCare-Children's Program** benefits under the provisions of this chapter, monthly household

income (as determined by this chapter) must be equal to or less than the income limit established in (a) through (d) above.

(f) (No change.)

10:79-4.2 Prospective budgeting of income

(a) The eligibility determination agency shall establish the best estimate of income that will be available to the household unit.

1. The best estimate of income shall be based on an average of the household unit's income [for the full two-month period preceding the date of application or redetermination]. Adjustments shall be made to the estimated income to reflect changes in income that either have occurred or which are reasonably anticipated to occur which would affect the household unit's income during a period of eligibility. **To establish the best estimate, the one-month period immediately preceding the date of application or redetermination shall be used.**

2. In the case of irregular payments, more than one month of income may be used.

3. All applicants should be screened against the State wage/disability/unemployment databases.

4. Documentation of income may be pursued if a crossmatch of any of these databases produces significant undisclosed income.

10:79-4.3 Countable income-Plan A

(a) For purposes of Plan A eligibility, except as specified below, countable income for children under the provisions of this chapter shall include the income of all members of the household unit as determined at N.J.A.C. 10:79- 3.5, and shall be determined in accordance with [regulations] **the rules** applicable to income in the AFDC-C program (see N.J.A.C. [10:82] **10:69**).

1. The maximum income limits as provided for at N.J.A.C. [10:82-1.2(d)] **10:69-10.3** do not apply.

2. Neither the \$30.00 nor the one-third disregard of earned income at N.J.A.C.[10:82-2.8(a)3 and 10:82-4.4(c)]**10:69-10.13(c)** apply.

3. The deeming of stepparent income at N.J.A.C. [10:82-2.9(d)] **10:69-10.33(d)** does not apply. (See N.J.A.C. 10:79-3.5(a) regarding the inclusion or exclusion of the stepparent in the household unit.)

4. The deeming of an alien sponsor's income at N.J.A.C. [10:82-3.8 does] **10:69-10.43 shall** not apply.

5. Wages paid by the U.S. Census Bureau for temporary

employment related to Census 2000 activities shall not be considered household income.

(b) Nonrecurring lump sum income received by a household unit of a child shall be added to any other income received by the household unit in that month. The total shall be divided by the income eligibility limit applicable to the household, **in accordance with N.J.A.C. 10:79-4.1**. The result will be the number of months the eligible members of the household unit shall be ineligible to receive [NJ KidCare] **NJ FamilyCare-Children's Program** under the provisions of this chapter. Any remaining income from this calculation is treated as if it were unearned income in the first month following the period of ineligibility.

1.(No change.)

2. Once established, the period of ineligibility may be reduced only in accordance with the AFDC provisions for shortening a period of ineligibility as found at N.J.A.C. [10:82-4.15(a)5] **10:69-10.23(a)5**. The basis for a determination to shorten the period of ineligibility shall be fully documented in the case record.

(c) Any person who received AFDC-**related Medicaid** [or Medicaid based on AFDC rules] and became ineligible for such assistance because of a period of ineligibility imposed as a result of the provisions of N.J.A.C. [10:82-4.15] **10:69-10.23** may establish eligibility under the provisions of this chapter. The amount

of the lump sum used to determine the original period of ineligibility shall be divided by the applicable income eligibility limit at N.J.A.C. 10:79-4.1 to determine the period of ineligibility for [NJ KidCare] **NJ FamilyCare-Children's Program** under this chapter. If that period has already expired, eligibility for benefits under this chapter may be established so long as all other eligibility criteria are met.

(d) The parents of children and the spouse of a child are legally responsible relatives to children applying for or eligible for benefits under the provisions of this chapter. When a legally responsible relative resides in the same household, his or her income is considered in the determination of eligibility and no further action is required. When a legally responsible relative does not reside in the same household, the eligibility determination agency shall pursue support from that relative in accordance with the provisions of N.J.A.C. [10:82-3.8 et seq.] **10:69-5.9.**

1. (No change.)

(e) (No change.)

10:79-4.4 Countable income-Plans B, C and D

(a) For purposes of Plan B, C or D eligibility, gross income for the applicant shall include the gross income of members of the household unit as defined in N.J.A.C. 10:79-3.6.

1. - 2. (No change.)

3. Earned income of a child who is a [full or part-time] **student** as defined in N.J.A.C. [10:82-4.7] **10:69-10.3** shall be counted in the household income.

4. Wages paid by the U.S. Census Bureau for temporary employment related to Census 2000 activities shall not be considered household income.

(b) Income for purposes of determining eligibility for the [NJ KidCare] **NJ FamilyCare-Children's Program**-Plans B, C or D shall be determined as follows:

1. (No change.)

2. [For wage earners, income shall be calculated based on gross income reported in the three months immediately preceding application for NJ KidCare-Plans B, C or D program.] **The best estimate of income shall be based on an average of the household unit's income. Adjustments shall be made to the estimated income to reflect changes in income that either have occurred or which are reasonably anticipated to occur which would affect the household unit's income during a period of eligibility. To establish the best estimate, the full one-month period immediately preceding the date of application or**

redetermination shall be used.

i. (No change.)

3. - 4. (No change.)

(c) - (d) (No change.)

(e) Nonrecurring lump sum income received by a household unit of a child shall be added to any other income received by the household unit in that month. The total shall be divided by the income eligibility limit applicable to the household. The result will be the number of months the eligible members of the household unit shall be ineligible to receive NJ FamilyCare-Children's Program under the provisions of this chapter. Any remaining income from this calculation is treated as if it were unearned income in the first month following the period of ineligibility.

1. The period of ineligibility shall begin the first month subsequent to the month the nonrecurring income is received or, if there is insufficient time to provide timely adverse action notice, the following month.

2. Once established, the period of ineligibility may be reduced only in accordance with the AFDC provisions for shortening a period of ineligibility as found at N.J.A.C. 10:69-10.23(a)5. The basis for a

determination to shorten the period of ineligibility shall be fully documented in the case record.

10:79-4.5 Resource eligibility

Children seeking [NJ KidCare] **NJ FamilyCare-Children's Program** benefits under the provisions of this chapter are eligible without regard to the value of the household unit's resources. The eligibility determination agency shall inquire about the household unit's resources only in order to establish income that may result from the household unit's resources.

SUBCHAPTER 5 ADMINISTRATION

10:79-5.1 Eligibility determination agencies-Plans B, C and D

Financial eligibility for the [NJ KidCare program] **NJ FamilyCare-Children's Program** is administered by the eligibility determination agencies under the supervision of the Division of Medical Assistance and Health Services. Financial eligibility for the [NJ KidCare] **NJ FamilyCare-Children's Program**-Plans B, C and D is administered by the Statewide eligibility determination agency under the supervision of the Division of Medical Assistance and Health Services.

10:79-5.2 Administration principles-availability of program rules

(a) The director of the eligibility determination agency shall assign copies of this chapter to administrative staff, all staff responsible for the determination of [NJ KidCare] **NJ FamilyCare-Children's Program** eligibility for children, and to social service staff as appropriate and shall ensure that each staff member is

thoroughly familiar with its requirements in order to apply the policy and procedures consistently.

(b) - (c) (No change.)

10:79-5.3 Principles of administration-general

(a) The following principles of administration apply in the NJ KidCare program:

1. Any [sponsoring adult] **authorized agent** or emancipated child who believes the applicant may be eligible shall be afforded an opportunity to make application (or reapplication) for the [NJ KidCare program] **NJ FamilyCare-Children's Program** without delay.
2. The [sponsoring adult] **authorized agent** or the emancipated child [are] **is** the primary source of information concerning program eligibility. The eligibility determination agency shall, when necessary, in the process of determining eligibility, use secondary sources of information with the knowledge and consent of the applicant or eligible person.
2. There shall be strict adherence to law and complete conformity with rules and administrative policy. Requirements other than those established by law or rule shall not be imposed as a condition of receiving assistance under the [NJ KidCare program] **NJ FamilyCare-Children's Program**.

10:79-5.4 Confidentiality of information

(a) No member, officer, or employee of the eligibility determination agency shall produce or disclose any confidential information to any person except as authorized below in this section.

1. (No change.)

2. The eligibility determination agency may disclose information concerning an applicant or eligible person to persons and agencies directly related to the administration of the [NJ KidCare program] **NJ FamilyCare-Children's Program**. Persons and agencies directly related to program administration are those who are properly authorized to be involved in the following:

i. - iii. (No change.)

iv. The conduct or assisting in the conduct of an investigation, prosecution, or civil or criminal proceeding related to the NJ KidCare program] **NJ FamilyCare-Children's Program**.

3. - 5. (No change.)

6. Pertinent information and records may be released in conjunction with any administrative hearing conducted by the Office of Administrative Law regarding action or inaction of the eligibility determination agency affecting an applicant's or eligible person's eligibility or entitlement under the [NJ KidCare program] **NJ FamilyCare-Children's Program**.

10:79-5.5 Material distributed to [NJ KidCare] NJ FamilyCare-Children's Program applicants or eligible persons

(a) All materials distributed to program applicants or eligible persons must:

1. Directly relate to the administration of the [NJ KidCare program] **NJ FamilyCare-Children's Program**;

2. (No change.)

3. Contain names only of individuals directly connected with the administration of the [NJ KidCare program] **NJ FamilyCare-Children's Program**; and

4. (no change.)

(b) The eligibility determination agency shall not distribute materials such as "holiday" greetings, general public announcements, **partisan** voting information, or alien registration notices.

(c) (No change.)

10:79-5.6 Nondiscrimination

(a) Title VI of the Federal Civil Rights Act of 1964 ([Public Law] **Pub. L. 88-352**), [and] section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 70b) and the Americans with Disabilities Act, [P.L.] **Pub. L. 101-336**, codified as 42 U.S.C. §§ 12101 et seq. prohibits discrimination on the ground of race, color, national origin, or handicap in the administration of any program for which Federal funds are received. Strict compliance with the provisions of these Acts and any regulations based thereon is required as a condition to receive Federal funds for the assistance programs administered by the [county welfare] **eligibility determination** agencies. These principles apply to the [NJ KidCare program] **NJ FamilyCare-Children's Program** in New Jersey.

1. The eligibility determination agency shall inform all staff members of their obligations in regard to the Civil Rights Act of 1964 **Pub. L. 88-352**), [and] section 504 of the Rehabilitation Act of 1973 **and the Americans with Disabilities Act (ADA), Pub. L. 101-336, codified as 42 U.S.C. §§12101 et seq.**

2. All persons seeking medical assistance shall be informed of Title VI of the Civil Rights Act of 1964 **Pub. L. 88-352**), [and] section 504 of the Rehabilitation Act of 1973 **and the Americans with Disabilities Act (ADA), Pub. L. 101-336, codified as 42 U.S.C. §§12101 et seq.**

3. - 5. (No change.)

SUBCHAPTER 6 BENEFICIARY RIGHTS AND RESPONSIBILITIES

10:79-6.1 Notice of the eligibility determination agency decision-Plan A

(a) The eligibility determination agency shall promptly notify any applicant for, or beneficiary of, the [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A [program] in writing of any agency decision affecting the applicant or beneficiary.

When a decision relates to any adverse action which may entitle a beneficiary to a fair hearing, the action may not be implemented until at least 10 days after the mailing of the notice (see (e) below for exceptions to the 10-day notice requirement).

1. - 3. (No change.)

(b) - (c) (No change.)

(d) When the processing of an application will be delayed beyond the standards for disposition of an application as set forth in N.J.A.C. 10:79-[2.1(d)] **2.3(f)** notice shall be mailed prior to the expiration of the disposition period notifying the applicant of the delay and reasons for it.

(e) The 10-day notice requirement for actions adverse to a program beneficiary need not be adhered to when:

1. (No change.)

2. The eligibility determination agency receives a clear written statement, signed by the emancipated child, or the caretaker [relative] **adult** that he or she no longer wishes to receive program benefits, or which gives information indicating a change in circumstances which requires a termination or reduction in benefits, and the emancipated child, or the caretaker **adult** [relative] has indicated in writing that he or she understands that this must be the consequence of supplying such information;

3. - 5. (No change.)

10:79-6.2 Fair hearings

(a) It is the right of every applicant for or beneficiary of the [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A program to be afforded the opportunity for a fair hearing in the manner set forth in N.J.A.C. [10:49-51 et seq] **10:49-10**, including, when applicable, continuation [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan A benefits pending the results of the fair hearing.

(b) (No change.)

10:79-6.3 Notice of the Statewide determination agency decision-Plan B, C and D

(a) The Statewide eligibility determination agency shall promptly notify any applicant for, or beneficiary of, the [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan B, C and D program in writing of any agency decision affecting

the applicant or beneficiary. When a decision relates to any adverse action which may entitle a beneficiary to an appeal, the action may not be implemented until at least [30] **10** days after the mailing of the notice (see (e) below for exceptions to the [30-day] **10**-day notice requirement).

1. - 2. (No change.)

(b) -(c) (No change.)

(d) The [30-day] **10**-day notice requirement for actions adverse to a program beneficiary need not be adhered to when:

1. (No change.)

2. The eligibility determination agency receives a clear written statement, signed by the emancipated child, or [caretaker relative] **authorized agent**, that he or she no longer wishes to receive program benefits, or which gives information indicating a change in circumstances which requires a termination or reduction in benefits, and the emancipated child, or [caretaker relative] **authorized agent**, has indicated in writing that he or she understands that this must be the consequence of supplying such information;

3. - 5. (No change.)

10:79-6.4 Post-application client responsibilities

Upon a determination of eligibility for the [NJ KidCare program] **NJ FamilyCare-Children's Program**, the [sponsoring adult] **authorized agent** or applicant has the on-going responsibility for the reporting of changes in family circumstances and for the provision of information as delineated at N.J.A.C. 10:79-2.1(c). Further, as requested by the eligibility determination agency, additional information must be provided. At any time that the eligibility determination agency lacks sufficient information to confirm continuing program eligibility because of the unwillingness of the [sponsoring adult] **authorized agent** or [sponsoring adults] **agents** to provide necessary information, the agency shall commence action to terminate the case and pursue recovery when warranted.

10:79-6.5 Grievances and appeals for [NJ KidCare] **NJ FamilyCare-Children's Program-Plan B, C and D**

(a) It is the right of every applicant for, or beneficiary of, [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan B, C or D, to be afforded the opportunity for a grievance review in the manner established in the policies and procedures set forth below. The notification of the right to a grievance review shall be incorporated in or attached to each adverse action notice and shall include explanation on how to request a grievance. The applicant or beneficiary shall be provided [30] **10** days notice before any adverse action is implemented. Appropriate complaints and grievances regarding [NJ KidCare] **NJ FamilyCare-Children's Program** should be referred to:

[NJ KidCare] **NJ FamilyCare-Children's Program**

PO Box 4818

Trenton, N.J. 08650-4818

(b) In situations where a beneficiary is denied medical services to which he or she feels that he or she is entitled, and those services are considered fee-for-service under the [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan B, C and D, a request for a hearing and a brief explanation of the situation should likewise be sent to the above address.

(c) - (d) (No change.)

10:79-6.7 Premiums

(a) Effective February 1, 2003, for children in families with income above 150 percent and at or below 200 percent of the Federal poverty level eligible for NJ FamilyCare-**Children's Program**-Plan C, a monthly premium shall be required to be paid as follows:

1. - 2. (No change.)

(b) Effective February 1, 2003, for children in families with gross income above 200 percent and at or below 250 percent of the Federal poverty level eligible for NJ FamilyCare-**Children's Program**-Plan D, a monthly premium shall be required. There shall be a single dollar premium of \$33.00 per month per family that applies to all families, regardless of income and regardless of the number of children in the family.

(c) Effective February 1, 2003, for children in families with gross income above 250 percent and at or below 300 percent of the Federal poverty level eligible for NJ FamilyCare-**Children's Program**-Plan D, a monthly premium shall be required. There shall be a single dollar premium of \$66.00 per month per family that applies to all families, regardless of income and regardless of the number of children in the family.

(d) Effective February 1, 2003, for children in families with gross income above 300 percent and at or below 350 percent of the Federal poverty level eligible for NJ FamilyCare-**Children's Program**-Plan D, a monthly premium shall be required. There shall be a single dollar premium of \$110.00 per month per family that applies to all families, regardless of income and regardless of the number of children in the family.

(e) Families shall be billed in advance of the coverage month. Failure to submit the full contribution shall result in termination of coverage for the month following the coverage month that the premium has not been received by the [NJ KidCare program] **NJ FamilyCare-Children's Program**.

(f) (No change.)

10:79-6.9 Limitation on cost sharing-Plans C and D

(a) There shall be a family limit on **the level of** cost-sharing equal to five percent of household income for Plan C **and D** beneficiaries. Cost-sharing

[means] **shall include** the premium payments and the personal contribution to care.

(b) (No change.)

(c) Once the limits have been met, the Statewide eligibility determination agency shall issue a certification indicating that the Plan C **or D** member has met their cost share limit, and the provider shall not collect a personal contribution until further notice.

(d) (No change.)

10:79-6.10 Copayments-Plans C and D

(a) For children in families with gross income above [200] **150** percent of the Federal poverty [limit] **level who are** eligible for [NJ KidCare] **NJ FamilyCare-Children's Program-Plans C and D**, copayments shall be required.

(b) (No change.)

(c) Copayments shall be charged in an amount in accordance with N.J.A.C. 10:49-9.1**(a) and** (c).

(d) (No change.)

SUBCHAPTER 7 [NJ KIDCARE] NJ FAMILYCARE-CHILDREN'S PROGRAM

BENEFICIARY FRAUD AND ABUSE POLICES

10:79-7.1 Termination of eligibility for good cause for fraud and abuse

(a) Any violation of (b) below by an applicant, beneficiary, caretaker **[relative] adult** or **[sponsoring adult] authorized agent** may result in the termination of the applicant's or beneficiary's eligibility from **[NJ KidCare] NJ FamilyCare-Children's Program**-Plan B, C and D. An individual receiving a Notice of Proposed Termination issued by the Director of the Division may request, within 20 days of the date of the Notice, an administrative law hearing before the Office of Administrative Law. The Notice shall be dated at least 20 days prior to the end of the month in which the termination is effective. Failure to request a hearing within this time limit shall result in automatic termination of benefits. Until such time as a final agency decision is issued by the Director as a result of such a hearing which terminates an individual from **[NJ KidCare] NJ FamilyCare-Children's Program**-Plan B, C and D, the individual shall remain eligible for such benefits, unless the Director determines and states in the Notice of Proposed Termination that temporary suspension of benefits prior to a hearing is necessary to protect the integrity of the **[NJ KidCare] NJ FamilyCare-Children's Program**-Plan B, C and D program and/or the health, safety or welfare of other **[NJ KidCare] NJ FamilyCare-Children's Program**-Plan B, C and D beneficiaries.

(b) The following grounds shall constitute good cause for termination:

1. Knowingly or intentionally making or causing to be made false statements or misrepresentations of material fact in any application or reapplication for benefits under **[NJ KidCare] NJ**

FamilyCare-Children's Program-Plan B, C or D;

2. Knowingly or intentionally making or causing to be made false statements, misrepresentation of material fact, or alterations on any [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan B, C and D program claim form, eligibility card, or other document issued by or on behalf of the Division;

3. Intentionally misusing or abusing [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan B, C or D program benefits;

4. Knowingly or intentionally converting all or part of [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan B, C or D program benefits to a use other than the individual's own legitimate use and benefit;

5. - 6. (No change.)

7. Engaging in a course of conduct or performing an act deemed improper or abusive of the [NJ KidCare program] **NJ FamilyCare-Children's Program** following notification that this conduct should cease; or

8. Failure to cooperate in a [NJ KidCare] **NJ FamilyCare-Children's Program** investigation.

(c) (No change.)

10:79-7.2 Application for readmission subsequent to termination of eligibility

After at least one year has elapsed from the date of the final agency decision terminating the eligibility of an applicant or beneficiary of [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan B, C or D for good cause, the terminated individual, or anyone with authority to act on his or her behalf, may apply to the Director for readmission to the [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan B, C or D **[program]**. The Director has full discretion to approve or deny such an application. Any individual whose application for readmission has been denied may request an administrative law hearing on the denial, and/or may submit another application to the Director when at least two years have elapsed from the date of the final agency decision denying readmission.

10:79-7.3 Applicability

N.J.A.C. 10:79-7.1 and 7.2 shall apply only to applicants for and beneficiaries of [NJ KidCare] **NJ FamilyCare-Children's Program**-Plan B, C and D benefits, and shall not be applicable to termination due to ineligibility initiated under N.J.A.C. 10:79-2 through 4.

SUBCHAPTER 8 PRESUMPTIVE ELIGIBILITY FOR [NJ KIDCARE] NJ FAMILYCARE-CHILDREN'S PROGRAM-PLAN A, B, AND C [CHILDREN]

10:79-8.1 Scope

This subchapter describes presumptive eligibility for children up to the age of 19 whose family's income is no greater than 200 percent of the Federal Poverty level and who otherwise meet the eligibility requirements for [NJ KidCare] **NJ FamilyCare-Children's Program** Plans A, B or C. The presumptive eligibility determination makes it possible for a child or the children in a family to receive [NJ KidCare] **NJ FamilyCare-Children's Program** Plan A, B or C **medical** services **on a** fee-for-services **basis** [care] from **any** [a NJ KidCare] **NJ FamilyCare-Children's Program** fee-for-service participating provider for a temporary period prior to application for [NJ KidCare] **NJ FamilyCare-Children's Program** benefits and while an application for these benefits is being processed by the county board of social services or the Statewide eligibility determination agency.

10:79-8.2 Period of presumptive eligibility

(a) The period of presumptive eligibility shall begin on the date an approved presumptive eligibility entity determines that, based on information provided by the family of the [presumptive eligibility] **presumptively eligible** beneficiary, the child(ren) meets the requirements and standards of this chapter.

(b) The period of presumptive eligibility shall terminate:

1. On the date a determination of eligibility or ineligibility for [NJ KidCare] **NJ FamilyCare-Children's Program** is made; or
2. If the child, or the child's parent, guardian, caretaker [relative] or

[sponsoring adult] **authorized agent** fails to file an application with the eligibility determination agency, on the last day of the month subsequent to the month in which the child(ren) was (were) determined presumptively eligible.

10:79-8.3 Presumptive eligibility determination entities

(a) A qualified presumptive eligibility entity shall be a New Jersey Medicaid provider and:

1. (No change.)
2. A local health department **that provides primary care services**; or
3. (No change.)

(b) - (c) (No change.)

10:79-8.4 Presumptive eligibility processing performed by the presumptive eligibility determination entity

(a) From preliminary information provided by a child (if appropriate), parent, guardian, caretaker [relative] **adult**, or [sponsoring adult] **authorized agent**, the approved presumptive eligibility entity shall determine if the child meets the eligibility criteria of this chapter. The approved presumptive eligibility entity shall obtain sufficient information from the child (if appropriate), parent, guardian,

caretaker [relative] **adult**, or [sponsoring adult] **authorized agent** to complete the [certificate] **certification** of presumptive eligibility. For purposes of the presumptive eligibility determination, the qualified presumptive eligibility determination entity shall request from the child (if appropriate), parent, guardian, caretaker [relative], or [sponsoring adult] **authorized agent** only that information necessary to determine the child's presumptive eligibility or ineligibility. The qualified presumptive eligibility determination entity shall make the determination of eligibility based solely on information obtained in the interview and shall not require any verification or documentation of the [presumptive eligibility] **presumptively eligible** beneficiary's statements.

(b) For any child determined presumptively eligible, the approved presumptive eligibility determination entity shall:

1. (No change.)
2. Forward a copy of the completed [certificate] **certification** [and the referral, if any,] to the county board of social services of the child's county of residence or to the Statewide eligibility determination agency. The choice for the determination agency for [NJ KidCare] **NJ FamilyCare-Children's Program** Plan A shall be made by the family. A [NJ KidCare] **NJ FamilyCare-Children's Program** Plan B or C application shall be sent to the Statewide eligibility determination agency;
3. Inform the **child (if appropriate)**, parent, guardian, caretaker

[relative] or [sponsoring adult] **authorized agent** that they must contact the eligibility determination **agency** [either] by mailing an application to the Statewide eligibility determination agency [or by arranging for a face-to-face interview with] **or** the county board of social services in order to complete the application process for [NJ KidCare] **NJ FamilyCare-Children's Program** benefits;

4. Give the child (if appropriate) [, parent, guardian, caretaker relative] or the [sponsoring adult] **authorized agent** of the presumptively eligible child a copy of [both] the [certificate and the referral, if any,] **certification** for [NJ KidCare] **NJ FamilyCare-Children's Program** benefits; and

5. Advise the child (if appropriate), parent, guardian, caretaker [relative], or [sponsoring adult] **authorized agent** of the presumptively eligible child, in writing, of the address and telephone number of the eligibility determination agency that [the referral and] the [certificate are] **certification is** being forwarded to.

(c) For any child for whom the approved presumptive eligibility determination entity is unable to determine presumptive eligibility, or who is ineligible under the criteria and standards of this chapter, the qualified presumptive eligibility determination entity shall refer the child to the county board of social services or to the Statewide eligibility determination agency, as appropriate, for evaluation of potential eligibility for any other Medicaid, Medically Needy or [NJ KidCare] **NJ**

FamilyCare-Children's Program entitlement. The address and telephone number of the appropriate office shall be provided, in writing, to the child (if appropriate), parent, guardian, caretaker [relative], or [sponsoring adult] **authorized agent** of the child.

10:79-8.5 Responsibilities of the Division of Medical Assistance and Health Services

(a) Upon receipt of a properly completed [certificate] **certification** from the approved presumptive eligibility determination entity, Division staff shall:

1. -2. (No change.)

3. Issue a [NJ KidCare] **NJ FamilyCare-Children's Program** Eligibility Identification Card; and

4. Notify the approved presumptive eligibility determination [agency] **entity** and the appropriate county board of social services **or Statewide eligibility determination agency** of the presumptive eligibility identification number assigned to the beneficiary.

10:79-8.6 Responsibilities of the [county board of social services or the Statewide] eligibility determination agency

(a) Upon receipt of the [certificate] **certification** of presumptive eligibility [and a NJ KidCare referral (if any)] from the approved presumptive eligibility

determination entity, the eligibility determination agency shall check for existing Medicaid, Medically Needy, or [NJ KidCare] **NJ FamilyCare-Children's Program** eligibility. If the child is receiving Medicaid benefits, Medically Needy benefits, or [NJ KidCare] **NJ FamilyCare-Children's Program** benefits, no further action shall be required by the county board of social services or the Statewide eligibility determination agency.

(b) If the child is not currently receiving Medicaid, Medically Needy or [NJ KidCare] **NJ FamilyCare-Children's Program** benefits, the eligibility determination agency shall, notwithstanding the application disposition standards in N.J.A.C. [10:79-2.3(e)] **10:79-2.3(f)**, arrive at a case disposition within the presumptive eligibility period.

1. (No change.)

2. The eligibility determination agency shall also provide the individual applying on the child's behalf with written notification, prior to the expiration of the presumptive eligibility period, of the specific reasons for the delay. (See N.J.A.C. [10:79-7.8] **10:79-8.8** for information regarding the notice and the rights of the applicant to a fair hearing.)

(c) In the case of a presumptively eligible beneficiary who is determined ineligible for [NJ KidCare] **NJ FamilyCare-Children's Program** within the presumptive eligibility period, the child's eligibility shall terminate on the **last day**

of the presumptive eligibility period [on the date of the eligibility determination]. If the child is ineligible for [NJ KidCare] **NJ FamilyCare-Children's Program**, the eligibility determination agency shall provide a written notice of such denial and the reasons why, as set forth in N.J.A.C. 10:79-6.

10:79-8.7 Responsibility of the applicant

The parent, guardian, caretaker [relative] or [sponsoring adult] **authorized agent** of a presumptively eligible child shall contact the eligibility determination agency [either] by mailing an application to the county board of social services or Statewide **eligibility determination agency** [vendor or arranging for an interview with county board of social services], as appropriate, during the presumptive eligibility period. As part of the eligibility determination process for [NJ KidCare] **NJ FamilyCare-Children's Program**, the parent, guardian, caretaker [relative], or [sponsoring adult] **authorized agent** of a presumptively eligible child shall complete any forms required as a part of the application process, and shall assist the eligibility determination agency in securing evidence that verifies eligibility.

10:79-8.8 Notification and fair hearing rights

(a) For a presumptively eligible child who is subsequently determined ineligible for [NJ KidCare] **NJ FamilyCare-Children's Program** benefits:

1. (No change.)

2. The eligibility determination agency shall provide the child (if appropriate), child's parent, guardian, caretaker [relative] or [sponsoring adult] **authorized agent** a notice of denial of the child's [NJ KidCare] **NJ FamilyCare-Children's Program** application in accordance with N.J.A.C. 10:79-6. The applicant's rights to a fair hearing or a grievance hearing are also outlined in N.J.A.C. 10:79-6.

(b) For a presumptively eligible child whose eligibility for [NJ KidCare] **NJ FamilyCare-Children's Program** has not yet been determined within the presumptive eligibility period, in accordance with N.J.A.C. 10:79-2.3(f)3, the eligibility determination agency shall provide the parent, guardian, caretaker [relative] or [sponsoring adult] **authorized agent** of the presumptively eligible child with written notification prior to the expiration of the presumptive eligibility period, setting forth the specific reasons for the delay in the [NJ KidCare] **NJ FamilyCare-Children's Program** application processing.

(c) A child denied presumptive eligibility by a qualified presumptive eligibility determination entity shall not be entitled to adequate notice of that determination and shall not be entitled to a fair hearing on that action. The denial of presumptive eligibility shall not affect the child's (if appropriate), parent's, guardian's, caretaker [relative's] **adult's** or [sponsoring adult's] **authorized agent's** right to apply for [NJ KidCare] **NJ FamilyCare-Children's Program** and to receive a formal determination of eligibility or ineligibility.

10:79-8.9 Scope of services during the presumptive eligibility period

All presumptively eligible [NJ KidCare] **NJ FamilyCare-Children's Program** Plan A, B and C beneficiaries shall be eligible to receive all applicable [NJ KidCare] **NJ FamilyCare-Children's Program** Plan A, B and C services listed in N.J.A.C. 10:49-5.2 (for Plan A) and N.J.A.C. 10:49-5.6(a) and (b) (for Plan B and C services) on a fee-for-service basis during the presumptive eligibility period, including the services that are otherwise only available through a managed care organization, except for those services that a managed care organization may be providing as additional services beyond the [NJ KidCare] **NJ FamilyCare-Children's Program** Plan A, B or C required services. The provision of the managed care services fee-for-service shall be limited to the presumptive eligibility period.

10:79-8.10 Limitation on number of presumptive eligibility periods

[All beneficiaries of presumptive eligibility for children who make an application for presumptive eligibility benefits for any Medicaid or NJ KidCare program] **A child** shall be limited to one continuous presumptive eligibility period [during the year, which shall be counted from the first day the applicant] **within a 12-month cycle beginning from the month in which the child** initially received presumptive eligibility.

Gwendolyn L. Harris, Commissioner

Department of Human Services

Date